

REMARKS

The above-identified patent application has been amended and reconsideration and reexamination are requested.

The examiner rejected claims 1-22 under 35 U.S.C. 103(a) as being unpatentable over Nichols et al. U.S. Pat. No. 6,363,282 B1 in view of Jones U.S. Pat. No. 6,526,574 B1.

Claim 1 has been amended to recite testing the operation of at least a portion of the updated software on the programmable device after upgrading and prior to restarting the programmable device. As amended, claim 1 is allowable over the references cited.

Claim 1 is directed to a method for updating software on a programmable device. Applicant contends that Nichols does not teach “testing...the updated software on the programmable device after upgrading and prior to restarting the programmable device.” The examiner admits that Nichols does not teach this feature of the claim. Nichols is related to updating software on medical devices. Because the programmable device in Nichols is a medical device, the device can't be shut down. Medical devices, such as a defibrillator or neural implant (Nichols, column 1, lines 63-64), are generally operational at all times to ensure proper functionality inside the body. Shutting the device down for a period of time would destroy the intended function of the invention in Nichols.

However, the examiner considers Jones as teaching “testing the operation of at least a portion of the updated software on the programmable device.” Jones is directed to the process of producing a patch file and updating a computer file using the patch file. Applicant contends that these teachings neither describe nor suggest “testing the operation of at least a portion of the updated software on the programmable device.”

The text in Jones that the examiner cites states that an object of the invention is “a patch system for an existing file which can be used to fix bugs, implement program changes, implement data and text revisions while providing an error checking system and a backup system which allows the user to restore the original existing file.” (Jones, column 1, lines 56-60). This

is different than what is recited in claim 1. Applicant does not consider the error checking in Jones as suggesting “testing...the updated software” as recited in claim 1.

There is only one mention of error checking in Jones that applicant can find. Applicant contends that this single mention of error checking does not make Jones an enabling reference, at least for the feature of testing the operation of at least a portion of the updated software on the programmable device after upgrading and prior to restarting the programmable device. This is an insufficient basis to enable one of ordinary skill in the art to design a method for testing updated software on a programmable device.

Assuming *arguendo* that Jones teaches testing the operation of at least a portion of the updated software on the programmable device after upgrading and prior to restarting the programmable device, applicant contends that there is no suggestion to use the teachings of Jones to modify Nichols. Such a modification would destroy the functionality of Nichols, since Nichols would not benefit from the operation of “testing...the updated software on the programmable device after upgrading and prior to restarting the programmable device.”

Claims 2-8, which depend directly or indirectly on claim 1, are allowable for at least the reasons discussed in claim 1. Moreover, these claims add additional distinctive features. For example, claim 6 adds the feature of the “server signaling the programmable device to shut down and restart prior to the backing up action.” Claim 7 adds the feature of a “user definable delay between the signaling and the shutting down.” Neither of these features are found in Nichols nor Jones. These features add the ability to remotely shut down the device, update the software, and restart the programmable device with a user definable delay between the signaling and shut down. As explained above, it is not suggested to incorporate features of this type in Nichols because the medical device systems shouldn’t be shut down while in use in the body.

Claim 9, which is a system claim with similar content as claim 1, is allowable for the reasoning discussed in claim 1.

Claims 10-14, which depend directly or indirectly on claim 9, are allowable for at least the reasons discussed in claim 9. Moreover, these claims add additional distinctive features.

Claim 15, which is a computer program product claim with similar content as claim 1, is allowable for the reasoning discussed in claim 1.

Claims 16-22, which depend directly or indirectly on claim 15, are allowable for at least the reasons discussed in claim 15. Moreover, these claims add additional distinctive features.

Claims 23-25 have been added and add additional features to the invention.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Enclosed is a \$54 check for excess claim fees. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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